

REMARKS

Applicant thanks the Examiner for a thorough examination of the present application, but respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. At the time of the outstanding Office Action, claims 1-57 were pending. Of these claims, claims 1-57 have been amended. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier. Thus, claims 1-57 are now pending for examination in this application.

Rejection Under 35 U.S.C. § 101

In the outstanding Office Action, the Examiner rejected claims 1-57 as being directed to non-statutory subject matter. In response, Applicant has amended claims 1-57. Applicant respectfully submits that each claim, as amended, is directed to statutory subject matter for at least the following reasons.

Claims 1-16 and 49-51

Claims 1-16 and 49-51, as amended, recite “[a] communication device, comprising: a memory; and a processor, wherein the processor is configured to execute instructions stored in the memory to....” Since a “device” with structural component disposed therein is clearly a statutory class under 35 U.S.C. § 101, Applicant respectfully submits that claims 1-16 and 49-51 are directed to statutory subject matter. As such, Applicant respectfully requests the Examiner to withdraw the rejection of each of these claims.

Claims 17-32 and 52-54

Claims 17-31 and 52-54, as amended, recite “[a] method, comprising: using a device to” perform the processes described in the claim. Accordingly, claims 17-31 and 52-54 now clearly indicate that the processes of dividing, storing, etc. are conducted by a device. Since a “device” must be used to satisfy the limitations of the claim, the process cannot be done by hand while meeting the limitations of the claims and therefore is statutory. If the Examiner

has further questions regarding whether or not the amended claim is statutory, Applicant refers the Examiner to the recent *In re Bilski* decision handed down by the Federal Circuit. In *Bilski*, the Federal Circuit heard the case *en banc* (i.e., the entire Federal Circuit bench rather than a three person panel) and expressly held that “[a] claimed process is surely patent-eligible under § 101 if: (1) it is tied to a particular machine or apparatus...” *Bilski*, slip op. at 10. (Emphasis added). Accordingly, the Federal Circuit has made it clear that a process or method tied to an apparatus or machine is in accordance with 35 U.S.C. § 101. As such, Applicant submits that claims 17-31 are in accordance with 35 U.S.C. § 101.

Claims 33-48 and 55-57

Claims 33-48 and 55-57, as amended, recite “[a] computer program product embodied on a computer-readable storage medium comprising: computer code for....” Support for this amendment may be found at least at paragraph [0152] of the published application, wherein it is expressly discussed that programs for controlling the processes of the present application may be stored in memory.

Applicant respectfully submits that claims 33-48 and 55-57, as amended, clearly set forth statutory subject matter, as the MPEP has made it clear that a computer code embodied on a computer-readable medium carries statutory weight.

MPEP § 2106.01(I) states:

[A] claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure’s functionality to be realized, and is thus statutory.

Accordingly, this section of the MPEP specifies that if a computer-readable medium is encoded with a data structure, the claim is statutory because the structural and functional interrelationships are defined. Since claims 33-48 and 55-57 recite a computer-readable medium encoded with a data structure, the structural and functional interrelationships are defined and the claim is statutory.

If the Examiner requires further evidence as to the statutory basis for claims 33-48 and 55-57, Applicant directs the Examiner to the following two portions of the MPEP:

[T]he claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material *per se* and hence nonstatutory. MPEP § 2106.01(I). (Emphasis added)

When a computer program is claimed in a process where the computer is executing the computer program's instructions, USPTO personnel should treat the claim as a process claim. **
When a computer program is recited in conjunction with a physical structure, such as a computer memory, USPTO personnel should treat the claim as a product claim. ** MPEP § 2106.01(I). (Emphasis added)

Accordingly, the MPEP differentiates between a computer-readable medium encoded with a data structure (statutory) and a mere program listing (unstatutory). Since claims 33-48 and 55-57 fall in the former category, the claims are directed to statutory subject matter. Moreover, and as discussed above, the MPEP requires that when a computer program is recited in conjunction with a physical structure (as is the case in claims 33-48 and 55-57), "USPTO personnel should treat the claim as a product claim." Thus, the MPEP requires the Examiner to treat claims 33-48 and 55-57 as a product claim and consider each recitation of "computer code for..." on its merits. To this point, Section 2106.01 of the MPEP states that "USPTO personnel must consider all claim limitations when determining patentability of an invention over the prior art." Moreover, Section 2106.01 of the MPEP states:

Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when

the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material *per se* and hence nonstatutory. (Emphasis added)

Accordingly, the MPEP acknowledges that computer programs are often recited in claims and provides guidance on how to examine such claims. In particular, the MPEP requires the Examiner to determine whether or not the computer program is being claimed as part of an otherwise statutory manufacture or machine. If so, the claim is statutory and all claim limitations must be considered. In this instance, the claimed “computer code” is clearly part of a statutory machine since an “computer-readable storage medium” is undoubtedly a statutory machine or manufacture. Therefore, claims 33-48 and 55-57 are statutory and all claim limitations must be considered, as prescribed by MPEP 2106.01.

Rejection Under 35 U.S.C. § 103(a)

In the Office Action, claims 1-57 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,304,578 to Fluss (“Fluss”) in view of U.S. Patent Publication No. U.S. 2004/0010612 to Pandya (“Pandya”).

Although Applicant does not agree with the above-mentioned rejection, in a good faith attempt to advance prosecution, Applicant has amended claims 1-57 to more particularly describe aspects of the present application. In addition, Applicant has made a plurality of amendments for formal and stylistic purposes. In making these amendments, Applicant does not intend to narrow the scope of the claims. To the extent that the cited references may still apply to the claims as amended, Applicant respectfully traverses for the following reasons.

Claims 1-5, 10, 11, 14-21, 26, 27, 30-37, 42, 43, and 46-48

Independent claim 1, as amended, recites in part:

wherein the processor is configured to execute instructions stored in the memory to a divide original data into a plurality of blocks, and store information within a header for restoring the plurality of blocks to the original data

Independent claims 17 and 33 recite similar claim elements.

Applicant respectfully submits that neither Fluss nor Pandya, considered alone and in combination, teaches or suggests (1) dividing original data into a plurality of blocks, and (2) storing information within a header for restoring the plurality of blocks to the original data.

Fluss discloses a packet routing and queuing method. In particular, Fluss discloses a buffer at a gateway or central office which assigns a high transmittal priority to data packets addressed to recipients who have recently received data and further assigns a low transmittal priority to data packets addressed to recipients who have not recently received data. *See, e.g.*, Abstract and col. 3, lines 6-17.

Fluss, however, does not teach or even suggest (1) dividing original data into a plurality of blocks, and (2) storing information within a header for restoring the plurality of blocks to the original data. Specifically, there is no dividing operation discussed in Fluss. Moreover, there is no discussion related to storing any type of data in a header, much less data relating to restoring the plurality of blocks to the original data. As such, Applicant submits that Fluss is deficient with regard to a plurality of elements recited in independent claims 1, 17, and 33.

Pandya does not cure the deficiencies associated with Fluss. Pandya is directed to storage network semiconductors. More particularly, Pandya is directed to a high performance processor. *See, e.g.*, Abstract and paragraphs [0002], [0005]-[0007], and [0067]. Pandya, however, does not teach or even suggest (1) dividing original data into a plurality of blocks, and (2) storing information within a header for restoring the plurality of blocks to the original data. Although the Examiner relies on the commentary at paragraph [0119] and [0135], Applicant respectfully submits that the cited text is completely unrelated to the features discussed in the independent claims. At best, paragraph [0135] mentions the word “header”; however, there is no discussion whatsoever indicating that information for restoring a plurality of divided blocks is included in the header. As such, Applicant submits that Fluss is deficient with regard to a plurality of elements recited in independent claims 1, 17, and 33.

Furthermore, if the Examiner wishes to re-assert either of these references, Applicant respectfully requests the Examiner to point out with particularity and explain how the

Examiner is interpreting the reference to correspond to the claims. Such a request is in accordance with 37 C.F.R. § 1.104(c)(2) which states that “[w]hen a reference is complex or shows or describes invention other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable” and “[t]he pertinence of each reference, if not apparent, must be clearly explained.”

Claims 6-9, 12, 13, 22-25, 28, 29, 38-41, 44, 45, and 49-57

Independent claim 6, as amended, recites in part:

the processor is configured to execute instructions stored in the memory to receive a plurality of blocks and, based on information stored within a header, restore the plurality of blocks to original data

Independent claims 22 and 38 recite similar claim elements. Accordingly, each of these claims describe the receiving-end perspective of the present application.

For the sake of brevity, Applicant will not repeat the teachings of Fluss and Pandya. Instead, Applicant incorporates its comments from above. As such, Applicant submits that neither Fluss nor Pandya, considered alone and in combination, teaches or even suggests (1) receiving a plurality of blocks, and (2) restoring the plurality of blocks to original data based on information stored within a header. In particular, Applicant submits that neither reference expressly discloses that a plurality of data blocks are received. Moreover, neither reference, discloses that the plurality of blocks are restored to original data based on information stored within a header. As such, Applicant submits that both references are deficient with respect to a plurality of features recited in claims 6, 22, and 28.

Because none of the references cited by the Examiner, either separately or in combination with each other, teaches or suggests all of the features recited in independent claims 1, 6, 17, 22, 33, and 38, Applicant submits that independent claims 1, 6, 17, 22, 33, and 38 are patentable over these cited references. Furthermore, because dependent claims 2-5, 7-16, 23-32, 34-37, and 39-57 are each directly or indirectly dependent upon independent claims 1, 6, 17, 22, 33, and 38, Applicant submits that each of these claims are allowable for

at least the same reasons discussed above, in addition to their own reasons which Applicant reserves the right to argue at a later time if necessary.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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